

The Committee also added amendments to the Bankruptcy Code to clarify how a case brought by the FDIC proceeds, including authority for the FDIC to serve as trustee, with accommodations to certain trustee obligations in order to make it feasible for the FDIC to serve.

The Committee also adapted a number of key protections from the Bankruptcy Code into the FDIC's new dissolution procedure. These protections include:

Priority protection for unpaid wages and benefit plan contributions for employees of the financial company, who do not have the same recourse against their employer as business creditors have against the company.

Protection of collective bargaining agreements from repudiation by the FDIC, unless the FDIC determines repudiation is necessary for the orderly dissolution of the financial company, taking into consideration the cost to taxpayers and financial stability of the U.S.

Appointment of a consumer privacy advisor to protect the privacy of consumers whose personal information is in the possession of the financial company.

The Committee also directed the Government Accountability Office to undertake two studies and reports:

The first is a report in the event a financial company is taken into emergency receivership and assets are removed by the FDIC, on the extent to which claims against the company for violations of the Truth in Lending Act have been satisfied.

The other is a report on the "safe harbor" provisions for derivatives, swaps, and securities under federal law, that excludes them from bankruptcy and receivership proceedings, on how they have affected the ability of businesses to reorganize.

ANTITRUST LAW

One major impetus of this legislation is to address the problem faced last year by financial institutions that were deemed "too big to fail." The emergency efforts to deal with those institutions led to infusions of billions of federal dollars, and federal guarantees of billions more, putting the Treasury at significant risk.

But "too big to fail" has another aspect that places our nation at significant risk—and that is the potential danger to competition when the marketplace becomes concentrated in the hands of so few competitors that consumers no longer have meaningful choice, and the healthy influence of competition on price, quality, and innovation are lost.

It is important to the Judiciary Committee, as the Committee in charge of the laws protecting our economic freedoms against monopolization and other anticompetitive restraints of trade, that should our nation ever be faced with a similar financial system emergency in the future, that antitrust protections remain in place to ensure that our response does not leave us, when the dust clears, with an even more concentrated market, with companies that are even bigger, with more market power, and less responsive to the consumers they are supposed to serve.

Accordingly, the Committee revised the emergency FDIC dissolution procedures for financial institutions posing imminent toxic danger to the broader financial system, to ensure that any proposed sale of significant assets to a competitor that occurs after the initial urgency has passed would be subject to effective pre-merger antitrust review when war-

ranted, under the procedure developed for reviewing sales of assets during a bankruptcy proceeding. This procedure expedites the initial review, while permitting the antitrust enforcement agency to extend the period when more information is needed to make its assessment. The Committee also clarified that the federal antitrust enforcement agencies would retain their legal authority to challenge a merger or acquisition that would harm competition in violation of the antitrust laws.

These changes balance the need for expeditious transfer of assets from a failing financial company to a safe new home with the imperative of preserving our competitive free market system.

The Committee also revised provisions in the title of the bill dealing with regulation of over-the-counter derivatives markets. Provisions in the legislation as introduced sought to prohibit entities involved in the derivatives markets from engaging in or facilitating anticompetitive conduct. These entities included derivatives clearing organizations, swap dealers, major swap participants, swap execution facilities, clearing agencies, security-based swap dealers, and major security-based swap participants. There was language in these provisions that appeared to create exceptions, and that the Committee was concerned might potentially be read to create exemptions from the antitrust laws.

The Committee revised these provisions to make clear that no antitrust exemptions are intended. In two instances, in parts of the derivatives title amending the Securities Exchange Act, the provisions were removed entirely. In three instances, in parts of the derivatives title amending the Commodity Exchange Act, the exception language was removed to make clear that the prohibitions apply without exception, and to further clarify that the antitrust laws remain fully in effect with respect to any conduct involved.

PRACTICE OF LAW

The Constitutional freedoms and legal rights we enjoy as Americans are ultimately protected in our courts, through the advocacy of attorneys who are licensed to practice before them. In keeping with these critical responsibilities, the activities of these "officers of the court" are regulated by the States, through government bodies, generally overseen by the State's highest court, with specialized expertise in the duties imposed by the code of legal ethics.

Accordingly, the Judiciary Committee revised the Consumer Financial Protection Agency Act title to clarify that the new agency is not being given authority to regulate the practice of law, which is regulated by the State or States in which the attorney is licensed to practice. The Committee further clarified that this is not intended to preclude the new agency from regulating other conduct engaged in by individuals who happen to be attorneys or acting under their direction, as long as the conduct is not part of the practice of law or incidental to the practice of law.

OTHER CONTRIBUTIONS

Other contributions by the Judiciary Committee include revisions to the Consumer Financial Protection Agency's new investigative authority to bring it closer into conformity with the Antitrust Civil Process Act, on which it is modeled; clarifications to the new revised procedures for FTC rulemaking in the unfair and deceptive acts or practices area, to bring them

closer in line with the Administrative Procedure Act, as intended; clarifications to the FDIC's new rulemaking authority to ensure it is used in compliance with the Administrative Procedure Act; and revisions to the new authority for nationwide service of subpoenas by the Securities and Exchange Commission to ensure that the authority will be exercised consistent with due process.

A STRONG SON OF THE SOUTH IN
HONOR OF SPC CRAIG C. SMITH,
THE UNITED STATES ARMY

HON. MIKE ROGERS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 15, 2009

Mr. ROGERS of Alabama. Madam Speaker, I rise today to honor a real American Hero, SPC Craig C. Smith of the 172nd Infantry Bgd 9th Eng from Montgomery County, Alabama. On April 5, 2009 in Iraq, after an IED blast, he almost lost his life . . . but did lose his leg. His battle to overcome his next victory is a lesson to us all. A lesson about faith and courage, and rebuilding his life. Along the way his mother, Rosanna Smith, like so many other mothers and parents have helped their sons and daughters with their unending support. I ask that this poem penned by Albert Caswell of the Capitol Guide Service be placed in the RECORD to honor him.

A STRONG SON OF THE SOUTH

On battlefields of honor bright . . .
There are but those who must win that
fight . . .
Who must march so bravely off to war . . .
To bare the burden, and all of that heartache
endure . . .
Armed but with only their most courageous
hearts, they soar . . .
While, there in the face of dark evil and
death . . .
As they so boldly fight with all that they so
have left!
From where does such strength and courage
so come?
And how do you raise such a magnificent
Southern Son?
A Strong Son of the South, this fine one!
From but a family of love . . .
And a fine Mother, who but holds her son so
very high above . . .
Sweet Home Alabama, this one she loves!
And in times of war . . .
There are new battles, that these fine heroes
and families must now endure . . .
When, in the midst of hell . . . as close to
death, your fine heart so swells . . .
As you lose your fine strong leg, will you win
this new battle?
As it's for him we pray!
For only armed with hearts of courage
full . . .
Will over evil, and heartache so rule!
For you Craig, were once the one . . .
Who like a deer, could so run . . .
Jump so high with all of your speed . . .
A sheer Tour De force, but for his country he
would bleed!
You're A Bama!
That can't be stopped!
With your heart of a hero, Craig you'll climb
this mountain . . . but to the top!
For you got a life to live, and so much to our
world to give . . .
For our Lord God put's men like you upon
this earth . . .
Fine men like you, in all your worth . . .
To Teach Us, To Reach Us, To All of Our
Hearts, To So Beseech Us!